

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

CRAIG FARKAS,	.	Civil Action No. 1:17cv1259
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	April 6, 2018
GENERAL DYNAMICS INFORMATION	.	10:10 a.m.
TECHNOLOGY and MS. AMY	.	
GILLILAND,	.	
	.	
Defendants.	.	
	.	
. . . . .	.	

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	CRAIG FARKAS (pro se) 2825 Solarro Drive Sierra Vista, AZ 85635
FOR THE DEFENDANTS:	NICHOLAS D. SAN FILIPPO, ESQ. McGuireWoods LLP 1750 Tysons Boulevard, Suite 1800 McLean, VA 22102-4215

<u>ALSO PRESENT:</u>	VALERIE FANT, ESQ.
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OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 17-1259, Craig Farkas v.  
3 General Dynamics Information Technology, et al. Would counsel  
4 please note their appearances for the record.

5 MR. SAN FILIPPO: Good morning, Your Honor. My name  
6 is Nick SanFilippo, here with McGuire Woods on behalf of GDIT  
7 and Ms. Amy Gilliland. With me is Ms. Valerie Fant, who is  
8 in-house counsel at GDIT.

9 THE COURT: All right. And, Mr. Farkas, I assume you  
10 are here on your own?

11 MR. FARKAS: I am.

12 THE COURT: Yeah. You're what we call a pro se, or  
13 on-your-own plaintiff.

14 MR. FARKAS: Yes.

15 THE COURT: All right. Well, as you-all know, this  
16 matter is before the Court on the defendants' motion to  
17 dismiss, and, Mr. Farkas, I recognize you came quite a distance  
18 to court today, and I want to make sure that we have a complete  
19 record on this, but you should understand that the law on these  
20 cases is well established and is relatively straightforward and  
21 strict.

22 You named Ms. Gilliland as a defendant. As the  
23 defendants point out, you can't sue an individual supervisor or  
24 employee under Title VII, so that portion of the case has to be  
25 dismissed as a matter of law.

1           And the real problem, of course, that you have in  
2 this case is that the right-to-sue letter that was issued by  
3 the EEOC advises that the Title VII lawsuit in federal court  
4 must be filed within 90 days of the date of receipt of the  
5 notice, and the problem is you were out of town for about two  
6 weeks, didn't receive the letter at your home because you  
7 hadn't had your mail transferred, and so when you filed your  
8 complaint, it's many days past the 90-day limit, and that  
9 90-day limit is just about jurisdictional. It basically means  
10 that unless there are compelling reasons, very compelling  
11 reasons that justified the late filing, the Court cannot hear  
12 the case.

13           Now, what I wanted to hear from you, if you don't  
14 mind coming up to the lectern, in that time period, what were  
15 you doing between the time you returned home and got the letter  
16 and the time you filed your lawsuit?

17           MR. FARKAS: By the time I got home and obtained the  
18 letter, the letter was actually delivered to my mailbox on  
19 August 5. While I was in West Virginia for what turned out to  
20 be a month, my mail was held, which --

21           THE COURT: Right.

22           MR. FARKAS: -- is a common practice.

23           Anybody who's going to be away from your home for an  
24 extended period of time is going to hold their mail.

25           THE COURT: There's nothing illegal or wrong about

1 that. It does put you at risk if something comes in that's  
2 time sensitive, that you're going to miss it.

3 MR. FARKAS: I understand that, Your Honor, but the  
4 statute states, as you just said, that the time frame starts  
5 when the mail is delivered. The mail was delivered to me on  
6 August 5. It was not received earlier, and it cannot be  
7 presumed that it was received earlier when I provided facts to  
8 the Court as to the actual date that it was delivered.

9 The letter from EEOC says that the 90 days starts  
10 from the date that the letter -- not that the letter was  
11 delivered, excuse me, but the date that I received the letter.

12 THE COURT: But the problem you have, I know that's  
13 what the letter says, but I hope you looked at the case law  
14 that was cited. Now, you're relying on a Second Circuit case.  
15 Second Circuit doesn't control what happens in the Fourth  
16 Circuit. This is the Fourth Circuit.

17 Each circuit has in some respects its own law. There  
18 has to be some degree of uniformity, but the simple fact is in  
19 the Fourth Circuit, there have been cases very much like yours.  
20 One of the cases that the defense cited to you involved a woman  
21 who was, I think, in Nicaragua for, much like you, a period of  
22 time outside of the country.

23 MR. FARKAS: Excuse me, Your Honor, but her choice  
24 was to go to Nicaragua. I had no choice. My job is I get  
25 ordered to go somewhere, I go somewhere. I was ordered to go

1 to West Virginia to help the Defense Forensics and Biometrics  
2 Agency with a national security issue. When that was extended  
3 for two weeks -- if it was not extended, I would have been home  
4 for the letter, no issue, but in a matter of national security,  
5 I had no choice but to remain in West Virginia to handle that  
6 issue.

7 THE COURT: And there's no problem with that. The  
8 problem you've got, though, is that the law in this circuit is  
9 it is expected that people will file within 90 days of the time  
10 that the letter was -- frankly, the safest thing is from the  
11 time it's been sent. There's a date on the letter. There's a  
12 presumption that a letter that is put in the mail will be  
13 received in three days. That's sort of a presumption.

14 But here's the question, and you haven't answered it  
15 for me: So you get back from West Virginia, and you see the  
16 letter. What do you do between the time that you see the  
17 letter, what were you doing in the 60 or so days after you  
18 received the letter? Were you still working?

19 MR. FARKAS: Yes.

20 THE COURT: Where were you working?

21 MR. FARKAS: I was working back in Arizona.

22 THE COURT: So you were back home.

23 MR. FARKAS: Um-hum.

24 THE COURT: All right? And I'm assuming you're a  
25 fairly well-educated person. You wrote an articulate

1 opposition to the motion to dismiss. You were able to find the  
2 Second Circuit case law. I don't know whether you bothered to  
3 look at any local law, that is, law that would apply to this  
4 case, but why didn't you just go ahead and file your complaint  
5 so that it would qualify to be within the 90 days?

6 MR. FARKAS: This is not the only legal case I'm  
7 involved in at this time, Your Honor. I have a case here in  
8 the State of Virginia against my brother. He has taken my  
9 mother, who has Alzheimer's and dementia, took her to sign a  
10 power of attorney giving him power over all of her finances,  
11 and he has been stealing her money.

12 I have been working on that with the state, and my  
13 mother takes precedent over that. My brother's stealing my  
14 mother's money is not acceptable.

15 THE COURT: But other than that, I mean, are you  
16 doing that pro se as well?

17 MR. FARKAS: Yes, I am.

18 THE COURT: Well, it's unfortunate, and I know you'll  
19 be frustrated by this ruling, but I can't find that there's the  
20 kind of extraordinary equitable situation, for example, if  
21 you'd had a major health issue and so you were, you know, in a  
22 hospital for an extended period of time, or there'd been some  
23 catastrophic issue that prevented you from being able to file  
24 within the time period, those are the types of things in which  
25 the Court would have the authority to excuse the late filing,

1 but in your case, it was your decision whether to have the mail  
2 forwarded or not.

3 That's nothing wrong with that, but you run the risk  
4 if you don't have your mail forwarded and there's something of  
5 time sensitivity, that you're going to miss the time period,  
6 and then --

7 MR. FARKAS: There was no -- I'm sorry, Your Honor.  
8 There was no anticipation on my part that I would be receiving  
9 the letter in that time frame. The EEOC took over a year just  
10 to address the complaint. There was no anticipation on my part  
11 that that letter would be received during that time frame.

12 THE COURT: I understand that, but nevertheless, I  
13 mean, this is the kind of thing that happens. And then, as I  
14 said, when you did get home, there was still plenty of time to  
15 have filed what was not an extensively complex or long  
16 complaint.

17 So I'm granting the motion to dismiss because I find  
18 on this record that the petition -- the complaint was filed  
19 untimely and that I have not heard any extraordinary grounds  
20 that would establish an equitable basis to have extended the  
21 time period.

22 Now, you have a right to appeal this decision.

23 MR. FARKAS: I shall.

24 THE COURT: If you're going to appeal the decision,  
25 you have to file your notice of appeal down in the Clerk's

1 Office within 30 days of today's date. The Court of Appeals  
2 will advise you as to when you need to do a full brief, but  
3 you'd better also stay in touch because, again, their time  
4 limits are very strict, all right?

5 MR. FARKAS: Okay.

6 THE COURT: Thank you. You're free to go.

7 MR. FARKAS: Thank you, Your Honor.

8 MR. SAN FILIPPO: Thank you, Your Honor.

9 (Which were all the proceedings  
10 had at this time.)  
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12 CERTIFICATE OF THE REPORTER

13 I certify that the foregoing is a correct transcript of  
14 the record of proceedings in the above-entitled matter.  
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16  
17 /s/  
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19 Anneliese J. Thomson  
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